

VIRGINIA:

IN THE FAIRFAX COUNTY CIRCUIT COURT

COMMONWEALTH

v.

LEE BOYD MALVO
A/K/A John Lee Malvo
Defendant

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CASE NOS. 102888

**GUARDIAN AD LITEM'S MOTION TO COMPEL THE PRODUCTION OF
RECORDS UNDER VIRGINIA CODE SECTION 16.1-266**

On or about November 7, 2002, Lee Boyd Malvo was transported from federal custody in Maryland into the Commonwealth of Virginia by federal law enforcement authorities and ultimately charged with three felonies. The petitions filed in the case listed his mother, Uma James, as living at 3002 Broadway, Ft. Myers, FL. 33901 and his father, Leslie Malvo, had a listed address of "Exact Unknown St Andrews, Jamaica." Finally, under the "Guardian/Legal Custodian . . . name and address" portion of the petition, an address of 2017 Woburn Street, Bellingham, WA was listed without an indication of what person lived at the address.

The Court appointed Michael Arif as the juvenile's counsel ("counsel") and Todd Petit as the juveniles' guardian ad litem ("guardian" or "GAL"). At the detention hearing, the Commonwealth's Attorney, Robert Horan, made an oral motion to remove the guardian ad litem from the case, citing the Virginia Supreme Court's decision in

Wright v. Commonwealth, 245 Va. 177 (1993) as authority that the Court could not appoint both an attorney and a guardian ad litem. The Court took the motion under advisement and indicated that a decision would be announced at the juvenile preliminary hearing.

On or about November 14, 2002, the guardian sent letters to several state and local agencies requesting information regarding the juvenile under the GAL's authority granted in Va. Code § 16.1-266(E). On or about December 4, 2003, the Juvenile and Domestic Relations District Court ruled that neither Va. Code § 8.01-9 nor § 16.1-266 granted the "Court authority to appoint a guardian ad litem," but found that there was a due process right under the United States Constitution to have a guardian ad litem appointed. The court then granted the motion to quash the request for information and but denied the Commonwealth's motion to dismiss the guardian ad litem from the case. The Circuit Court, the Honorable Jane Marum Roush presiding, dismissed the guardian's appeal on January 21, 2003, finding that the Court did not have jurisdiction to hear the matter.

On January 28, 2003, the Circuit Court, the Honorable Jane Marum Roush presiding, held a hearing regarding the case of Commonwealth v. Malvo. At the hearing, the Court requested the guardian ad litem, the Commonwealth's Attorney and the juvenile's attorney to argue whether the guardian ad litem's appointment in the case should continue. The Court questioned the Juvenile Court's finding of a Due Process right to guardian ad litem. Ultimately, the Court continued the appointment of the guardian ad litem without indicating whether the guardian ad litem was appointed under Va. Code §16.1-266 or under the Due Process Clause of the Fourteenth Amendment.

On January 29, 2003, the guardian ad litem sent letters to requesting information regarding the juvenile, Lee Boyd Malvo, to the Fairfax County Police Department, the Fairfax County Sheriff's Office, the Hanover County Sheriff's Office and the Prince William County Police Department, via their respective County Attorneys. Counsel also requested that counsels contact the guardian ad litem so that mutually convenient hearing date could be set. On February 4, 2003, the guardian received responses from the County Attorneys denying any information requested without indicating their availability for a hearing. (see letters attached).

Wherefore, the Court has an obligation under Virginia Code §16.1-266 to appoint a guardian ad litem. In addition, the guardian ad litem clearly has the statutory authority to request and receive information regarding the juvenile under Va. Code §16.1-266 from all state and local agencies. In addition, Va. Code Section 16.1-269.1(E) states "An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age." Accordingly, the guardian ad litem respectfully requests that this Honorable Court compel the Fairfax County Police Department, Fairfax County Sheriff's Office, Prince William County Sheriff's Office and Hanover County Sheriff's Office to provide the guardian ad litem with any and all records relating to Lee Boyd Malvo, a/k/a John Lee Malvo. Finally, the guardian ad litem requests that this Court refer to the Memoranda filed previously by counsel regarding the appeal of the request for records that was denied on January 21, 2003 by this Court.

Respectfully submitted

Todd G. Petit
Law Office of Todd G. Petit
10511 Judicial Drive
Fairfax, VA 22030
Guardian ad litem for Lee Boyd Malvo

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was mailed first class mail and faxed to Robert M. Ross, Asst. County Attorney 12000 Government Center Parkway, Suite 549, Fairfax, VA 22035, Facsimile No. 703-324-2665, Sterling Rives, Hanover County Attorney, P.O. Box 470, 7516 County Complex Road, Hanover, VA 23069, Facsimile No. 804-365-6302, Sharon Pandak, Prince William County Attorney, 1 County Court Complex, Prince William, VA 22192, Facsimile 703-792-6633 on this 14th day of July, 2003.

Todd G. Petit ✓ _____

BOARD OF SUPERVISORS

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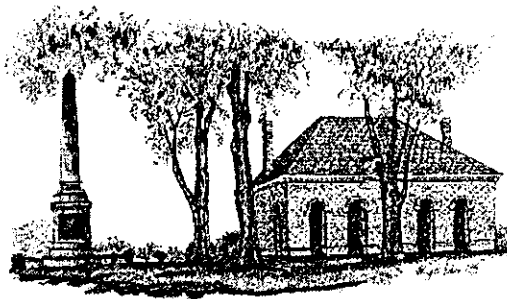
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South Anna District

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Henry District

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Cold Harbor District

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Mechanicsville District



Hanover Courthouse

Hanover County
P.O. Box 470
7516 County Complex Road
Hanover, VA 23069-0470
(804) 365-6035
(804) 365-6302 (Facsimile)

Richard R. Johnson
County Administrator

Cecil R. Harris, Jr.
Deputy County Administrator

John H. Hodges
Deputy County Administrator

Sterling E. Rives, III
County Attorney

File No. 5235

January 31, 2003

Todd G. Petit
Attorney and Counselor at Law
10511 Judicial Drive
Fairfax, Virginia 22030

Re: Commonwealth v. Lee Boyd Malvo a.k.a. John Malvo

Dear Mr. Petit:

I am astounded by your letter dated January 29, 2003.

You request law enforcement records, citing Virginia Code § 16.1-266 and attaching a copy of the Order for Appointment of Guardian Ad Litem dated November 8, 2002, despite the fact that on December 4, 2002, Judge Maxfield specifically rescinded your appointment pursuant to § 16.1-266 and ruled that you are not entitled to access to law enforcement records and despite the fact that on January 21, 2003, Judge Roush dismissed your appeal on this issue.

In addition, your letter requests that Mr. Ross, Ms. Pandak and I contact you in order that "we may set a mutually convenient hearing date." Since you have, to my knowledge, filed no motion or other pleading in the Circuit Court since the dismissal of your appeal, I am more than a little curious to know what would be the topic of this hearing that you propose.

Under these circumstances and given fact that your appointment as guardian ad litem will, pursuant to Judge Roush's order, terminate on February 18, 2003, your request for records and request to schedule a hearing date are simply bizarre.

My response to both requests is negative.

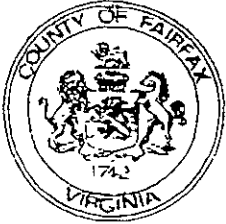
Sincerely,

Sterling E. Rives, III

Todd G. Petit
January 31, 2003 – Page 2

SER/cai

Cc: Colonel V. Stuart Cook, Sheriff
Kirby H. Porter, Commonwealth's Attorney
Robert M. Ross, Assistant County for Fairfax County
Sharon E. Pandak, Prince William County Attorney



FAIRFAX COUNTY

OFFICE OF THE COUNTY ATTORNEY

12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035-0064

Telephone: (703) 324-2421

Facsimile: (703) 324-2665 or 324-3938

V I R G I N I A

February 3, 2003

**VIA FACSIMILE AND
FIRST-CLASS MAIL**

Todd G. Petit, Esquire
10511 Judicial Drive
Fairfax, VA 22030

Re: Document Request Dated January 29, 2003

Dear Mr. Petit:

We are writing on behalf of the Fairfax County Police Department, the Fairfax County Sheriff's Office, and the Prince William County Police Department in response to your letter dated January 29, 2003, in which you once again request records in our clients' possession relating to Lcc Boyd Malvo aka John Lee Malvo pursuant to Va. Code Ann. § 16.1-266 (Michie Supp. 2002).

We are surprised and disappointed that you are seeking to obtain records under an Order entered on November 8, 2002, that was ruled invalid by Fairfax County Juvenile and Domestic Relations District Court Judge Charles J. Maxfield on December 4, 2002. Specifically, the December 4, 2002, Order states that "as the appointment of the guardian *ad litem* is not pursuant to 16.1-266 the provisions of subsection E are not applicable." A copy of the December 4, 2002, Order is enclosed. Further, your appeal of the December 4, 2002, Order was denied by Fairfax County Circuit Court Judge Jane Marum Roush January 21, 2003.

Your conduct in this regard is without legal authority and we wish to advise you that any further attempts by you to enforce the invalid Juvenile Court Order will result in a request for sanctions.

Sincerely yours,

Robert M. Ross /
Assistant Fairfax County Attorney

Sharon E. Pandak
Prince William County Attorney

RMR/vnc
Enclosure

TODD G. PETIT
ATTORNEY AND COUNSELOR AT LAW

10511 JUDICIAL DRIVE
FAIRFAX, VA 22030

(703) 218-8416
(703) 218-8417

FAX: (703) 591-5082
EMAIL: Todd.Petit@verizon.net

January 29, 2003

Robert Ross, Fairfax County Attorney
12000 Government Center Parkway
Suite 549
Fairfax, Virginia 22035-0064

Sharon E. Pandak, Prince William
County Attorney
1 County Complex Court
Woodbridge, Virginia 22192

Sterling E. Rives, III, Hanover
County Attorney
7516 County Complex Road
Hanover, Virginia 23069

Dear Counsel:

As promised, I am requesting that your clients, the Fairfax County Police Department, Fairfax County Sheriff's Office, Prince William County Police Department, and the Hanover County Sheriff's Office provide me with any and all records relating to Lee Boyd Malvo a/k/a John Lee Malvo. I am making this request consistent with the authority granted under Virginia Code Section 16.1-266 and am presenting you with a copy of the Court's Order regarding my appointment.

Since it is clear that it is your intent to oppose any such request, please contact me so that we may set a mutually convenient hearing date.

Sincerely,

Todd G. Petit

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

)

CRIMINAL NO. 102888

VERSUS

)

LEE BOYD MALVO a/k/a

)

John Lee Malvo

INDICTMENT - CAPITAL MURDER (2
Counts) and USING A FIREARM IN THE
COMMISSION OF A FELONY

On January 28, 2003, Robert F. Horan, Jr., the Commonwealth's Attorney, LEE BOYD MALVO a/k/a John Lee Malvo, the Defendant, Michael Arif, Counsel for the Defendant, and Todd Petit, Guardian Ad Litem for the Defendant, appeared before this Court. The Defendant is indicted for the felonies of CAPITAL MURDER (2 Counts) and USING A FIREARM IN THE COMMISSION OF A FELONY and he appeared while in custody.

This case came before this Court today for hearing and to set a trial date.

The Court, after hearing argument, **ORDERED** that this case be set on November 10, 2003, at 10:00 a.m., for trial with a jury.

Counsel for the Defendant advised the Court that the Defendant waives his right to a speedy trial in this case.

The Court, after hearing argument, **ORDERED** that the appointment of Todd Petit as Guardian Ad Litem for the Defendant shall terminate as of February 18, 2003, the Defendant's eighteenth (18th) birthday.

The Court set March 3, 2003 at 10:00 a.m. as a hearing date for motions and **ORDERED** that the Defendant file any motions to be entertained on that date by February 14, 2003. The Commonwealth shall respond by February 24, 2003. Any motions by news organizations related to the issue of cameras in the courtroom will also be heard on March 3, 2003, and should be filed by February 14, 2003. The Commonwealth and the Defendant shall reply by February 24, 2003 to any such motions.

The Defendant was remanded to the custody of the Sheriff.

Entered on January 29, 2003.

JUDGE JANE MARUM ROUSH